A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/5/2008 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korf et al 6013029 in view of Patsalos et al 5607390, Bergveld et al 6463312 and Pfeiffer 5640954. Korf in figure 2 shows a dialysis probe including an inlet portion 15 receiving dialysis fluid, a supply portion 13 coupled to the inlet portion for conducting dialysis fluid through the skin, a discharge tuber 14 for conducting dialysis fluid out of the body, where the discharge fluid can be positioned perpendicular to the skin surface, 15, an outlet portion 27coupled to the discharge tube at a joint portion 3 and 7, which joins the element 16 to element 27. The joint portion includes a sensor 3. It does not have the supporting plate. However, Patsalos et al teaches that in dialysis probes, it is desirable to have the access portion attached to a support plate 7, in order to prevent the needle from breaking loose inside the body (see column 1, lines 28-38). Hence it would have been obvious to modify Korf to use such a late, to increase patient safety.

In addition, Korf does not describe the structure of the tubes 13 and 14, the combination does not have the supply and discharge tubes connected and they are not membranes. However, Bergveld et al teaches an alternate access device which is a U-shaped membrane for the same purpose as the interface of Korf. Hence, it would have been obvious to use the access structure of Bergveld, as it is merely the selection of an element that is well known for the purposes of Korf. In addition, the combination does not have the valve. Pfeiffer shows the same type of device as Korf et al, where there is a check valve 90 for preventing flow of fluid from the sensor back to the needle. Since the valve is before the sensor, it would be in the discharge tube. Hence, it would have been obvious to modify Korf et al to include such a valve, so as to control the fluid flow and maintain accurate readings. With respect to claim 31, the sensor is removable in that it can be taken out of the device.

Applicant's arguments filed 6/5/2008 have been fully considered but they are not found to be persuasive.

Applicant has asserted that a check valve is unnecessary in Korf because it has a constant flow from the interface to the detector. The examiner notes that Pfeiffer also has a constant flow, but still uses the check valve. Hence, it is the examiner's position that this argument fails.

Applicant has asserted that the use of a check valve is contraindicated by Korf because Korf teaches using little to no power to move the perfusate. It is the examiner's position that the minimal power increase necessitated by the valve would be

outweighed by the gain in safety gained from using the valve to prevent backflow of fluids.

Applicant further argues that the valve is a moveable part and that Korf teaches away from moveable parts. It is the examiner's position that Korf teaches that non-moveable parts are used in the preferred embodiment. Nowhere does Korf state that moveable parts cannot be used or would not work. In addition, a one way valve present limited impediments to forward flow, so the power increase required to flow through the valve would be minimal. Accordingly, it is the examiner's position that the rejection will stand.

Applicant has further asserted that Korf does not provide motivation for the valve. The examiner notes that a reference is not expected to and most often does not provide motivation for its own modification. Pfeiffer provides the motivation.

Applicant has asserted that Pfeiffer does not have the sensor adjacent the valve. This argument is not considered to be relevant to prosecution, as the question is whether the combination has the feature. As the examiner noted above, in the combination, the valve would be adjacent the sensor.

More specifically, in Pfeiffer, the valve is the dialysate line, i.e. is between the patient and the sensing device. This corresponds to the discharge tube in Korf. Since the discharge tube connects to the joint portion Korf, i.e. the portion joining the outlet to the discharge tube, the valve would be "adjacent" or near the joint portion. Since the sensor of Korf is in the joint portion, it is also "adjacent" the valve.

The examiner further notes that applicant has stated that adjacent means "immediately following one another." The examiner notes that there is no limiting definition of the term adjacent on the record. Therefore, the examiner must give the term its broadest reasonable interpretation. The examiner notes that one of the definitions of adjacent is "near or close, but not necessarily touching."

Applicant has asserted that impermissible hindsight has been used to piece the rejections together. The examiner disagrees, noting that there is motivation for each combination, particularly in view of the language in the KSR decision handed down by the Supreme Court.

This is a RCE of applicant's earlier Application No. 10/087522. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/
Primary Examiner, Art Unit 3735

RLN
June 13, 2008